



From Survivor to Defendant

How the law is being weaponised to silence victims of sexual violence

October 2025

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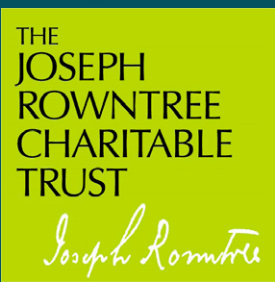
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FROM SURVIVOR TO DEFENDANT

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So much was taken from me when I was sexually abused, but I still had my voice. It felt like in suing me he was taking that final piece. Being sued for defamation felt like the ultimate form of gaslighting. The impact of these proceedings will follow me for the rest of my life

– Respondent to survey conducted by The Gemini Project.

LUCY NEVITT and **VERITY NEVITT**

Surviving in Silence – The Nature and Impact of SLAPPs
against Survivors, The Gemini Project, February 2025
thegeminiproject.org/research/

Foreword

AS A LAWYER and long-standing advocate for women’s rights, I have witnessed first-hand the many ways in which the legal system routinely fails survivors of sexual and gender-based violence. This report offers a vital new lens through which to understand that failure: the growing and deeply concerning use of Strategic Lawsuits Against Public Participation, which are being used to silence those who speak out.

SLAPPs are not merely legal nuisances. They are calculated acts of legal intimidation, designed to drain the energy, finances, and resolve of those who dare to exercise their right to freedom of expression. For women speaking out about sexual violence or abuse, the threat of a defamation suit or other legal action can be paralysing. It is a chilling irony that the law, intended to provide redress and protection, is instead being used to suppress truth and obstruct justice.

I commend this report for shining a light on an issue that has for too long operated in the shadows. It exposes the profound and far-reaching impact that SLAPPs have, not only on survivors themselves, but on society as a whole. The cost of failing to take action against SLAPPs falls not only on those directly targeted, but also on survivors silenced by fear, on the public denied access to vital information, and on our justice systems undermined and discredited when manipulated in this way.

This report is a clear and urgent call to action. Lawmakers, legal professionals, and civil society must work together to introduce robust regulatory and legislative safeguards against SLAPPs. We must ensure that the law serves justice, rather than subverting it.

Baroness Helena Kennedy KC

Introduction

SINCE IT BEGAN in 2017, the #MeToo movement has inspired millions of women around the world to speak out about their experiences of sexual and gender-based violence (SGBV). The impact of the movement was profound, and not without backlash. Some of the women who spoke publicly about their experience, or the journalists who reported on SGBV, subsequently found themselves facing threats of legal action from those that had been the subject of their allegations.

Many of these legal actions can be recognised as SLAPPs – strategic lawsuits against public participation – a form of legal harassment designed to intimidate and silence those who speak out on matters of public interest. SLAPPs were first documented in the United States in the 1980s, but have only come to the fore in Europe in the last decade.

It is impossible to know how many testimonies have been stifled by SLAPPs. These lawsuits are rarely intended to succeed

in court, or even to reach trial. Instead, their power lies in the threat: the prospect of protracted, expensive, and emotionally exhausting litigation. Their goal is not justice, but suppression. By overwhelming their targets with legal and psychological pressure, SLAPPs aim to isolate, exhaust, and ultimately silence those speaking out.

For SGBV survivors, this burden is particularly acute. Engaging with a SLAPP means reliving trauma, navigating complex legal systems, and facing ongoing contact with their abuser. In these cases, litigation becomes not just a legal tactic but a continuation of abuse by other means.

“The process of a legal claim seems to suit a coercive controlling character very well. They have access to the power of the court. They can use a lawyer to send intimidating messages. The defendants are in a very difficult position. They can’t just say ‘ok I’ve had enough’ without having to debase

themselves and apologise,” Tamsin Allen, head of the media and information law team at Bindmans, told an Index event in 2023. The fact that the SLAPP target is effectively trapped is, she said, something that someone who’s abusive may enjoy.⁰¹

Efforts to exploit an imbalance of power are characteristic of a SLAPP. This imbalance may be a result of the litigant’s financial advantage, but a societal advantage may also be exploited. In cases of SLAPP facing survivors of SGBV, a societal advantage easily arises from the stigma and the disbelief that survivors of SGBV generally face.

While there have been attempts in many jurisdictions to increase the conviction rate of sexual offenders, investigations and prosecutions for sexual offences remain woefully low. “Rape and sexual abuse have been effectively decriminalised,” a consortium of organisations focused on tackling SGBV wrote in 2020.⁰² “Despite the high prevalence

of rape and sexual abuse and the increase in reporting in recent years, prosecutions and convictions have dropped to the lowest since records began.”

Both survivors and abusers may believe that if a crime hasn’t been proven in the criminal courts, the survivor (as the defendant in a defamation case) will be presumed to be lying, increasing the risk that they’ll be found liable for defamation. The perceived lack of evidence or a criminal conviction leaves survivors especially vulnerable to SLAPPs.

“My solicitor says my ex’s repeated threats of court, and his applications to the court, are worthless but I still have to defend myself against them... he has lied to the courts repeatedly, but it seems there’s nothing we can do to stop him. I don’t think I will ever be free of his abuse and control. I feel like I am living in a nightmare, which will never stop,” said one respondent as part of a response to a survey conducted by The Gemini Project.⁰³ →

01: Stopping SLAPPs: UK Anti-SLAPP Coalition’s Website Launch, Index on Censorship, June 2023, <https://www.youtube.com/watch?v=0JNC0-ArmdY&t=3182s>

02: Centre for Women’s Justice, Imkaan, and Rape Crisis England & Wales, The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change, November 2020 <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/03/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>

03: Lucy Nevitt and Verity Nevitt, Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025, <https://thegeminiproject.org/research/>: The survey carried out by the Gemini Project (in 2023) investigated the scope of civil litigation used to silence survivors of SGBV in the UK. The responses were collected via an anonymous self-report questionnaire. Respondents were recruited via volunteer sampling through social media. 68 responses met the survey inclusion criteria of consenting to participate in the survey, being a resident in the UK, being a victim/survivor of domestic abuse, child sexual abuse, or sexual abuse, and having been a defendant in legal action brought against them by an abuser in a court in the UK.

→ At the same time, the enforced silence makes it extremely difficult to understand the scope and scale of the issue. “No one knows how many women’s stories have been silenced because these letters are confidential and marked ‘not for publication’,” barristers Jennifer Robinson and Keina Yoshida wrote in their book, *Silenced Women: Why the law fails women and how to fight back*, referring to a line that frequently appears on the top of letters threatening legal action.⁰⁴

“When people are being silenced, you’ve got a lack of evidence and that’s a problem,” said solicitor Mark Stephens, who specialises in freedom of expression cases and has worked on a number of high-profile cases involving survivors of SGBV.⁰⁵ “While we’re not encouraging survivors of SGBV to come forward, we’re denying ourselves the opportunity to understand the nature of a problem that is seriously in the public interest.”

The women who spoke to Index for this report are unusual in their courage and fortitude; they refused to be silenced by the stigma associated with speaking publicly about sexual assault or by the threat of legal action for having done so. Many survivors are not prepared to share their experiences of legal harassment, often fearing that speaking out could worsen their legal troubles.

Until now, the SLAPP cases that have encircled the policy discussions in Ireland and the UK have predominantly been related to investigative journalism, with less focus on cases arising from other public interest issues, including SGBV. This report represents an effort to address that awareness gap. It focuses on the four legal systems in the UK and Ireland: Scotland, Northern Ireland, England and Wales, and the Republic of Ireland. It examines the process of deciding to speak out, receiving legal threats, funding a defence, and going to court. ✕

The last place you can go is social media - [to] name the perpetrator as some form of protection for other women. If we can’t speak about it, it can’t be tackled.

– NINA CRESSWELL
Sued for Speaking Out, Good Law Project,
August 2023, [youtube.com/watch?v=McKqVVYeBgQ](https://www.youtube.com/watch?v=McKqVVYeBgQ)

04: Jennifer Robinson and Keina Yoshida, ‘*Silenced Women: Why The Law Fails Women and How to Fight Back*’, published by Endeavour, October 2024, page 161

05: Index interview with Mark Stephens, May 2025



Strictly Confidential & Legally Privileged
Not for publication

Without Prejudice

Dear Member of Parliament,

We act for [REDACTED] [REDACTED] ('our client'). You have made and repeated a number of seriously untrue allegations and misrepresentations that are highly damaging to our client. These allegations have emerged from a position of dishonesty. Your speech and subsequent comments have caused our client considerable embarrassment, anxiety and distress and we have been asked to write to you to set out our client's case. This matter is very serious and requires your urgent and immediate attention.

Our client believes your comments are part of a coordinated and dishonest campaign that you are playing a prominent role in. The client is troubled by your attempt to hide behind parliamentary privilege when you have liberally repeated these claims through your social media accounts and email communication to third parties. This flies in the face of the standards expected of parliamentarians. The regurgitation of such misinformation smacks of lazy engagement with the facts, which is not to be expected of someone of your standing and reputation. Our client is an avid believer in free speech but also takes the protection of his reputation extremely seriously. He notes this right does not extend to harassment or the transmission of malicious lies and defamatory statements.

You have relied on dubious material from demonstrably biased NGOs and activists, who have since retracted their comments, apologised publicly and paid a discretionary fee to a charitable foundation of our client's choosing. We cannot see how you could have a reasonable belief that publishing these allegations about our client is in the public interest. In actual fact, there is no public interest in publishing false allegations or sharing misinformation. We have advised our client that he has a strong claim in libel, inaccurate processing of his data and in harassment against you and you have no defence to such claims. Any defences that you may attempt to put forward are bound to fail. You should be aware that the burden of proving the truth of these allegations will be with you.

Given that your statements have been republished in the USA, our client has potential legal redress there. You may be aware that penal damages (which would no doubt be awarded in this case given your malicious intent) are available in libel suits in some US jurisdictions. We expect our client could be awarded 7-figure damages in the US. This letter is marked without prejudice because it is a genuine attempt to resolve a dispute before further damage is caused. Please also be aware that any attempt to disseminate this confidential communication beyond your immediate legal advisors and your insurer (which we encourage you to notify of this 7-figure claim) is a potential contempt of court.

Should you not publicly retract your statements and apologise, our client will not hesitate to take legal action. Your failure to be reasonable in this respect will be relied upon in court as evidence of your continued malice. We will use such conduct to seek the maximum possible damages, including aggravated damages, and all other remedies available to our client. We look forward to hearing from you within 7 days of the date of this letter.

Yours sincerely,

*Silver, Langston
And Percival Partners*

www.SLandPPartners.co.uk
645 Berkeley Square, Mayfair, London, UK

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What are SLAPPs?

SLAPPS (STRATEGIC LAWSUITS Against Public Participation) misuse the legal system to intimidate or punish individuals for exercising their right to free expression on issues of public concern. Once it is clear that a case involves a matter of public interest, certain signs of abuse can help identify whether it is a SLAPP. The more of these signs a case displays, the more likely it is to be classified as a SLAPP. These indicators are now widely recognised and outlined in the Council of Europe's Recommendation on SLAPPs.⁰⁶ They include, but are not limited to, the following:

- 1 the claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant;
- 2 the arguments put forward by the claimant are partially or fully unfounded;
- 3 the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- 4 the claims amount to abuse of laws or procedures;

- 5 the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant;
- 6 the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- 7 the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate;
- 8 the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- 9 the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;
- 10 the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

Many of these features of abuse are also evident in the spoof legal letter that the UK Anti-SLAPP Coalition sent to MPs last September.⁰⁷ ✕

LEFT: This is a spoof letter sent by the UK Anti-SLAPP Coalition to all MPs in 2024 to convince them of the need to take action against SLAPPS. It is an example of the kind of letters that are sent to intimidate people into silence.

06: Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPS), Council of Europe, April 2024, <https://rm.coe.int/0900001680af2805>
07: UK Anti-SLAPP Coalition, 'Threatening legal letter sent to every sitting MP as Parliament delays establishing anti-SLAPP protections', September 2024, <https://antislapp.uk/2024/09/12/silver-langston-and-percival-partners/>

Why do survivors decide to speak out?

ACCORDING TO A 2024 report by researchers at City St George's, University of London, despite nearly 80% of people initially reporting their assault to the police, only four in 10 indicated they would do so again.⁰⁸ Survivors of sexual and gender-based violence who have been failed by the police may feel compelled to seek justice through alternative means. Pursuing a civil case against the perpetrator is one option, but the costs are prohibitively high. Reaching out to a journalist to share their story might be another route, yet not always a practical or accessible one. As a result, many survivors may turn to social media platforms to speak out and share their experiences.

Social media has played a transformative role in empowering survivors to speak out about SGBV, and has allowed people to come together to collectively break through the silence and stigma that have long kept

survivors isolated. But deciding to speak out on one's own platform is, in the words of one survivor, "not a small thing."⁰⁹ There's the anxiety of being discredited or accused of seeking attention, and the uncertainty of how friends, family, or employers might react. Sharing such personal and often traumatic experiences online exposes survivors to threats and online harassment, alongside the risk of legal retaliation.

"In our experience, women take [the decision to speak out] for a range of reasons. They may have no faith in the police, or they may have had faith in the police but been failed by them - if their allegations weren't taken seriously or weren't properly investigated," wrote Robinson and Yoshida. "But in our experience, the overwhelming reason women decide to speak out is to warn other women and prevent the man from abusing anyone else."¹⁰

This has been the reason given by most of the women who have been in touch with Index on Censorship in the course of our work on this report. One of those women is Nina Cresswell, who was sexually assaulted walking home from a nightclub when she was a student in 2010. She reported the crime to police at the time, but the investigation was quickly closed.

Several years later, in the wake of the #MeToo movement, she decided to post her story on the anonymous blogging platform, Telegra.ph. "Who wins if we stay silent? Not us. I'm relieved women can finally talk about these predators and be believed. I'm relieved action is starting to happen," Cresswell wrote in the post.¹¹

She sent the link to some friends, as well as to her assailant's business partner. She later published the story publicly on social media. Her intention was to warn other women who could otherwise become victims of the man

in question, particularly because he was an established tattoo artist, who would have had access to women's bodies.¹²

Cresswell described feeling "cloaked in guilt" at the thought of others enduring the same ordeal she had faced. "I felt like there was no other choice," she said, reflecting on her decision to speak out. "The last place you can go is social media - [to] name the perpetrator as some form of protection for other women. If we can't speak about it, it can't be tackled".¹³ She subsequently faced a defamation action from the man she had named.

Like Cresswell, Kayleigh Payne decided to speak out following the #MeToo movement, and in particular after the Belfast Rape Trial, in which a group of professional rugby players were found not guilty of sexually assaulting a young woman in Northern Ireland.

Payne had recently given birth to a daughter and said she was chilled by the general "don't →

08: The survey was responded to by 2,858 survivors of rape and sexual assault who reported their cases to police in England and Wales between July 1, 2023, and June 30, 2024. An additional 345 survivors whose cases were not known to the police at the time they completed the survey provided their reasons for not reporting. 90% of respondents were female and 88% were White British. The most common age range for respondents was between 25 and 34 years old (27%). 73% of rape survivors say police treatment worsened their mental health. End Violence Against Women, November 2024, <https://www.endviolenceagainstwomen.org.uk/only-1-in-10-rape-survivors-would-report-to-the-police-again/>

09: Index interview with Kayleigh Payne, May 2025

10: Jennifer Robinson and Keina Yoshida, 'Silenced Women: Why The Law Fails Women and How to Fight Back', published by Endeavour, October 2024, page 146

11: Hay v Cresswell [2023] EWHC 882 (KB) para 61 <https://www.judiciary.uk/wp-content/uploads/2023/04/Hay-v-Cresswell-26.04.23.pdf>

12: Ibid. paras 62, 80

13: Sued for Speaking Out, Good Law Project, August 2023, <https://www.youtube.com/watch?v=McKqVYyBgQ>

The terror from threat of legal proceedings was harder to deal with than the rape as it is a threat with no end point

– Respondent to survey conducted by The Gemini Project.

LUCY NEVITT and VERITY NEVITT

Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025

thegeminiproject.org/research/

→ ruin their lives” attitude, which seemed to pervade the commentary on the trial.¹⁴ She was especially affected by the commentary because of the fact that she had been subject to a sexual assault in 2004.

She said she didn’t go to the Gardaí immediately after the assault because she had been subject to harassment and bullying at the hands of her abuser and his friends after she told her friends what had happened.¹⁵ When she reported the assault 11 months later, the Gardaí didn’t open an investigation, telling her that it was a he-said-she-said situation and nothing could be done about it.¹⁶ This led Payne to believe that she had done all that she could, until she decided to disclose it publicly more than a decade later.¹⁷ She was sued for defamation after she posted about her experience in 2018.

In 2018, sisters Lucy and Verity Nevitt reported allegations of sexual assault and rape to the police. Following an investigation, in February 2019, the police decided that they would take no further action due to lack of evidence. Verity said that the police told them

that they could consider speaking out online, but told them not to name him, to say alleged, and to call it serious sexual assault instead of rape. However, the sisters thought it was best to expose who he was and what he’d done in order to warn others about him.¹⁸ This led to a legal action being brought against the sisters based on accusations of misuse of private information and harassment. A claim of defamation was added thereafter.

These experiences show a clear pattern: when the criminal justice system fails to act, survivors may feel compelled to take matters into their own hands. Instead of speaking out on social media, a survivor could also decide to bring a civil action against their abuser. In a civil court, allegations are judged against a lower standard of proof – on a balance of probabilities rather than beyond a reasonable doubt, as required in criminal proceedings.

However, that does not make for a more accessible path to justice for survivors. “The majority of rape victims cannot afford to pursue this kind of justice,” said Ella Janneh, who filed a civil action against her rapist after →

14: Index interview with Kayleigh Payne, May 2024
15: Kayleigh Payne, Dublin Anti-SLAPP Conference, Index on Censorship, October 2024, <https://www.youtube.com/watch?v=VwNoZKhWsWg&feature=youtu.be>
16: Ibid; Alice Chambers, Garda watchdog handing half of its cases back to gardaí to investigate, The Journal, May 2023, <https://www.thejournal.ie/watching-the-watchdog-gsoc-investigation-6054964-May2023/>
17: Kayleigh Payne, Dublin Anti-SLAPP Conference, Index on Censorship, October 2024, <https://www.youtube.com/watch?v=VwNoZKhWsWg&feature=youtu.be>
18: Catriona Innes and Jennifer Savin, “I was sued by my rapist”: The rise in abusers silencing women who dare to speak out, Cosmopolitan, June 2023, <https://www.cosmopolitan.com/uk/reports/a44171616/sued-by-abuser-darvo/>

→ the Crown Prosecution Service (CPS) refused to prosecute him.¹⁹

“My motivation was just to hold a rapist accountable, just to stop him from harming other people,” she said.²⁰ The risk of harm to others was especially acute because the man in question was a practicing sex therapist – someone in a position of trust with potential access to vulnerable individuals.

Janneh set up a crowdfunding page to help fund her claim and asked a defamation lawyer to review the page before it went live. “I felt like I made quite a lot of concessions in the way that I spoke about [it] in public,” she told Index.²¹

She didn’t name him in the crowdfunder, but nonetheless received a pre-action legal letter from lawyers acting for him. She felt she had no other choice but to remove the page. “For my own safety I took it down because I would be facing a defamation suit before I could have my own claim tested.” Any potential defamation action against her would

likely have been heard before her civil claim, which would have pushed her pursuit of justice further out of reach.

In June 2024, she won her case, with the judge saying that there was “no doubt” that her account of rape and sexual assault was true.²² “It took eight years of me fighting legal battles that clocked up hundreds of thousands of pounds to be able to say his name in the public domain safely. I had to wait to get into the courtroom to do so. I had to fight that long just to be able to sound the alarm for other victims,” Janneh told Index.²³

Some survivors may decide to share their story with a journalist in the hope that a media outlet will tell the story on their behalf. But not every story of SGBV can be picked up by the media. “I would love to be the kind of person who can give every single person who ever contacted me hours and hours of my time but there are not enough hours in the day. I think that’s one of the really difficult things,”

journalist Rosamund Urwin of The Times told Index, reflecting on the difficulty of writing about survivors’ stories.²⁴

“One of the challenges journalistically is that editors need [the perpetrator] to be a certain level of fame to justify doing the story,” said Urwin. This is because the more well-known an individual is, the easier it is to ascertain that there is a public interest in the story. At the same time, Urwin says that the issue with many #MeToo stories is that they have reduced the scope of the story down to just one individual. “But these people have been allowed to behave in this way by their institutions,” she said. “It isn’t so much about the individuals but about how an institution has covered up for people.”

That was one of the messages at the heart of the Girls in Green investigation, jointly published by RTÉ Investigates and the Sunday Independent in 2024, regarding the mistreatment of female footballers in Ireland

in the 1990s. Those women were speaking out more than 30 years after they had experienced the abuse. Why? “They felt this is for the better for women of football,” explained Mark Tighe, who jointly led the investigation.

“And it had a really positive effect in terms of the FAI [Football Association of Ireland] looking at their safeguarding policies, realising there [are] still big gaps there in terms of how there’s more women playing football than ever before, but there [aren’t] these policies in terms of safeguarding.”²⁵

It took RTÉ and the Sunday Independent two years to complete the Girls in Green investigation. Despite this level of scrutiny, there was no guarantee that the organisations – nor the survivors themselves – wouldn’t be subject to legal threats or actions from the alleged perpetrators. “It is possible that their former coaches, who held them in silence for so many years, could sue them personally,” Tighe said.²⁶ ✕

19: Comment from Ella Janneh to Index, June 2025

20: Index interview with Ella Janneh, January 2025

21: Ibid.

22: Leigh Day, ‘Ella Janneh Wins Her Civil Claim for Sexual Assault Against Sex Therapist Mike Lousada’ (2024) <https://www.leighday.co.uk/news/news/2024-news/ella-janneh-wins-her-civil-claim-for-sexual-assault-against-sex-therapist-mike-lousada/>

23: Comment from Ella Janneh to Index, June 2025

24: Index interview with Rosamund Urwin, April 2025

25: Mark Tighe, Dublin Anti-SLAPP Conference, Index on Censorship, October 2024, <https://www.youtube.com/watch?v=VwNoZKhWsWg&feature=youtu.be>

26: Ibid.

Publicly naming perpetrators

IN OCTOBER 2017, actress and activist Alyssa Milano invited Twitter users to use the hashtag #MeToo to share their experiences of sexual harassment or assault.²⁷ In doing so, Milano was effectively calling on people to reclaim their stories, their experiences of sexual harassment, and to break the silence and the stigma that surrounds the issue. In the 24 hours that followed, there were more than 1 million tweets and retweets using the hashtag #MeToo.²⁸ The movement spread fast with spin-off hashtags emerging around the world, adapting to different languages, contexts and industries.

In that same month, the Public Prosecution Service in Northern Ireland had already made

their decision to prosecute the four professional rugby players in connection with the alleged rape of a woman in Belfast. The trial was widely followed by the media and discussed online. Their subsequent acquittal in March 2018, in light of what many saw as compelling evidence, was met with rebuke on social media.²⁹ People used the hashtag #Ibelieveher to express their dissatisfaction with the ruling.³⁰

Among them was Senator Aodhán O’Riordáin, who published a tweet referring to “smug, well-connected, middle-class boys”.³¹ KRW Law, representing one of the defendants, Paddy Jackson, said that it had no choice but to issue a notice of intention to sue O’Riordáin for defamation.³² The law firm also said it

would “not hesitate to repeat similar legal action against anyone who, deliberately or otherwise, sees fit to attack our client”.³³ They said: “[t]o the extent that the ‘I believe her’ comments seek to undermine the finding of the jury and imply that Mr Jackson is guilty of the crime of which he has been acquitted, they are defamatory”.³⁴ Senator O’Riordáin deleted the post and apologised.

Human rights expert, Fionnuala Ní Aoláin, said that KRW Law’s “aggressive assertion of defamation” raised serious human rights issues. She said it had been a highly controversial trial and people were entitled to criticise its processes and outcomes. “Law does violence to women,” she said, “compounding the physical and

emotional harms women experience from sexual harm. Masculinity pervades our courts.”³⁵

As a result of the social media reaction to the Belfast Rape Trial, Northern Ireland’s Criminal Justice Board commissioned a review of the law and procedure in prosecutions of serious sexual offences in Northern Ireland. Included in the scope of the review was the impact of social media on the conduct of court hearings, the arguments for defendant anonymity, and provisions for restrictions on reporting.³⁶ This resulted in the publication of the Gillen Review in 2019.

The review ultimately recommended a “voluntary protocol” that would govern how “serious sexual offences are reported” in the →

27: “Me Too” was first coined by Tarana Burke in 2006 but only entered into widespread use online following Alyssa Milano’s social media post in 2017

28: Jamillah Bowman Williams, Lisa Singh and Naomi Mezey, #MeToo as Catalyst: A Glimpse into 21st Century Activism, University of Chicago Legal Forum, Vol 2019, Article 22, 2019, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1658&context=uclf> page 374

29: R v Jackson (Patrick) and Olding (Stuart) (Application for Costs) [2018] NICC 20, para 102

30: The women suffered vaginal bleeding and an “internal tear”, the sexist attitudes displayed by the four men in private social media conversations after the night of the party, were aired in evidence. These included WhatsApp messages sent between the accused: “There was a lot of spit roast last night” (Jackson), “it was like a merry go round at the carnival” (Olding), and “Love Belfast’s sluts” (McIlroy). Messages sent by the alleged victim included “What happened was not consensual” and “I’m not going to the police. I’m not going up against Ulster Rugby. Yea because that’ll work.”

31: Olivia Hayes, People who use #IbelieveHer at risk of being sued, says Paddy Jackson’s lawyer, JOE, April 2018, <https://www.joe.co.uk/news/people-use-ibelieveher-risk-sued-says-paddys-lawyer-170478>

32: Kevin Doyle, Jackson’s lawyers to sue labour senator over libellous tweet, Independent, March 2018, <https://www.independent.ie/regional/herald/jacksons-lawyers-to-sue-labour-senator-over-libellous-tweet/36761215.html>

33: Ibid

34: Cate McCurry, Rugby rape trial: Libel me and I’ll sue you, warns Jackson, Belfast Telegraph, March 2018, <https://www.belfasttelegraph.co.uk/news/northern-ireland/rugby-rape-trial-libel-me-and-ill-sue-you-warns-jackson/36760750.html>

35: Susan McKay, How the ‘rugby rape trial’ divided Ireland, The Guardian, December 2018, <https://www.theguardian.com/news/2018/dec/04/rugby-rape-trial-ireland-belfast-case>

36: Sir John Gillen et al, Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland, Part 1, April 2019, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

→ media.³⁷ The recommendation did not call for legislation, yet the review led to the brief adoption of Section 12 to 16 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022.

The provisions in the legislation afforded alleged perpetrators of sexual offences anonymity for their lifetime and up to 25 years after their death.³⁸ It effectively criminalised survivors’ right to publicly identify a perpetrator of sexual violence if the perpetrator had been reported but not charged for the crime. Under the legislation, identifying such a perpetrator would have been punishable by a maximum six month prison sentence and/or a maximum fine of £5,000.³⁹

The legislation was widely condemned. Journalist Sam McBride said that it criminalised diligent investigative journalism and criminalised victims.⁴⁰

Sections 12 to 16 of the Justice Act were subsequently declared unlawful due to their incompatibility with the right to free expression under Article 10 of the European Convention

on Human Rights (ECHR) following a successful judicial review by several media organisations.⁴¹ Nonetheless, the very fact that this legislation was enacted should serve as a warning to legislatures across the UK and Ireland about the risks of not giving due consideration to survivors of SGBV and their right to speak out.

The law would have prevented survivors from speaking publicly about their experiences, even in the absence of legal threats or proceedings. It would have largely eliminated the need for perpetrators to use SLAPPs to silence survivors in Northern Ireland. Survivors such as Nina Cresswell, Verity and Lucy Nevitt, and Kayleigh Payne would likely have been criminalised under the legislation (if it had been applied beyond Northern Ireland). This is because the men they accused would have been granted anonymity, having been reported to the police but never formally charged with a crime.

The fact that legislation of this kind could have been enacted – even temporarily – in the UK should serve as a stark warning about the

lack of consideration and priority given by legislatures to SGBV survivors and their right to freedom of expression.

Legislatures may be failing to support SGBV survivors in their efforts to warn others about potential perpetrators – and, in some instances, the judiciary has been similarly unhelpful. Many survivors who speak out publicly about SGBV do so with the aim of protecting others, often naming the perpetrator in an effort to prevent future harm. However, the court may decide to grant anonymity to the claimant (the alleged perpetrator), effectively undermining survivors’ ability to warn and protect others.

This was Lucy and Verity Nevitt’s experience. As SGBV survivors, they would have been entitled to anonymity, but they applied for the anonymity order in place over them to be lifted so that they could be publicly identified. “We waived [our anonymity] because we thought it was protecting him,” Verity explained to Index.⁴²

It was not a decision they took lightly, but they were intent on identifying the alleged

perpetrator in order to warn others. “I think about it everyday and I kind of wish I had it back but I obviously can’t get that back ever,” Verity said.⁴³

Despite the Nevitts’ efforts to have the perpetrator named in court, the judge ruled that no oral or written reference could be made to the claimant’s name during the proceedings. This enabled him to remain anonymous and use a pseudonym. “The effect of the claimant’s identity being withheld [...] is to avoid the automatic interference with his privacy entailed in the inclusion of his name and other personal details in court documents,” Justice Steyn wrote in her judgment.⁴⁴

This approach can seriously nullify the impact of people speaking out. “One of the things that the naming of an individual brings to the fore is a warning,” Mark Stephens said.⁴⁵ “Lots of people have come out and said ‘he did that to me too - I thought I was the only one’. If you grant anonymity you are, almost by definition, hobbling women from being able to access that kind of information.” ✕

37: Ibid.

38: Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022, s.12

39: Ibid. s.16

40: A Northern Ireland law granting anonymity to people suspected of sexual offences until they are charged is not compatible with human rights or press freedom, a judge has said. BBC Newsline via Facebook, May 2024, <https://www.facebook.com/BBCNewsline/videos/a-northern-ireland-law-granting-anonymity-to-people-suspected-of-sexual-offences/254326697772743/>

41: News Group Newspapers Ltd and Associated Newspapers Ltd [2024] NIKB 45 para 133; Brendan Hughes, Minister denies misleading assembly over sex law, BBC News, June 2024, <https://www.bbc.co.uk/news/articles/c8005g9lxx5o>

42: Index interview with Verity Nevitt, 7 May 2025

43: Ibid.

44: CWD v Nevitt & Ors [2020] EWHC 1289 (QB) <https://www.5rb.com/wp-content/uploads/2020/06/CWD-v-Nevitt-Ors-2020-EWHC-1289-QB.pdf>

45: Index interview with Mark Stephens, May 2025

Legal threats and intimidation

“I FOUND THE EXPERIENCE of being sued for defamation completely retraumatising. You don’t decide to be sued and you can’t stop it, but I’ve been left reliving the worst experience of my life for the last two years,” Nina Cresswell said in a video published by Good Law Project a few months before her case went to trial.⁴⁶

There are several factors that make a legal action (or the threat thereof) especially traumatic for survivors of SGBV. The low prosecution and investigation rates in these cases means that SGBV survivors are less likely to have judgments or evidence which support their claims, leaving them more susceptible to legal actions.⁴⁷ A perceived lack of evidence leaves survivors themselves feeling disempowered to defend their cases. That reinforces the broader culture of silence around SGBV, discouraging others from coming forward for fear they too will not be believed or protected by the law.

The differences between the criminal and civil systems creates an imbalance too. As Robinson and Yoshida point out, “it is much easier for her to be sued successfully for defamation than it is for him to be convicted of rape.”⁴⁸ The justice system effectively enables abusers to have the upper hand, while survivors struggle to get justice. Sometimes, just the threat of legal action or a solicitor’s letter is enough to prevent a victim from speaking out or to make them withdraw their comments altogether.

“I just remember sitting on the sofa and opening it. The first page was... there was immediately loads of legal jargon. It was very aggressive,” Verity Nevitt told Index, recalling the day that she received the letter telling her that she was being sued for misuse of private information and harassment. “Because they’d written that [I] couldn’t tell anyone about it, I thought I couldn’t even talk to a solicitor, so I

was like: Oh God, I don’t know what to do.”

For Kayleigh Payne, her first communication from the claimant’s solicitor came via social media. Their message said: “You must now immediately remove all references to my client.” It told her to provide an undertaking never to post any material concerning her abuser in the future, and gave her a deadline of midnight that night. The message came in at quarter past five on a Friday evening when she had little or no chance of reaching a solicitor or legal advisor. “He was very aggressive,” Payne told Index.⁴⁹ A letter of claim followed shortly thereafter, which said that the claimant was suing her for defamation and seeking damages for mental anguish and legal fees.⁵⁰

The use of legal jargon, intimidatory language, and communications sent outside regular working hours can leave defendants feeling deeply isolated and powerless. These

tactics are characteristic of SLAPP and are designed to overwhelm and intimidate. By exploiting the authority and perceived legitimacy of legal processes, targets may believe that the proceedings are fair and legitimate. As a result, defendants feel they have no option but to comply with the claimant’s demands.

“There is that self-doubt when you get these letters and they’re telling you that you’re the person in the wrong because you’re the defendant now,” Nevitt told Index.⁵¹ “There is a sense of ‘maybe I did do something wrong’ even though I know I didn’t.”

“Lawyers act on behalf of, and should not be conflated with, their clients. However, they are responsible for the tactics they decide to deploy within their work and they are subject to a number of professional obligations,” explained Susan Coughtrie, who co-chairs the UK Anti-SLAPP Coalition (alongside →

46: Sued for Speaking Out, Good Law Project, August 2023, <https://www.youtube.com/watch?v=McKqVVYeBgQ>

47: Equality Now, Re: the Right to Freedom of Opinion and Expression of Victims and Survivors of Sexual Violence and Exploitation, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, June 2021, https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/06/16062605/Equality-Now_Gender-Justice-and-the-Right-to-Freedom-of-Expression-Submission.pdf para 8

48: Jennifer Robinson and Keina Yoshida, ‘Silenced Women: Why The Law Fails Women and How to Fight Back’, published by Endeavour, October 2024, page 147

49: Index interview with Kayleigh Payne, May 2024

50: Ibid.

51: Index interview with Verity Nevitt, May 2025

→ Index) and leads the Coalition’s work on regulation.⁵² “It is critical that lawyers balance their duty to act in their client’s interest with their duty to the courts and to uphold the rule of law, the latter taking precedence when they come into conflict.”

A warning notice on SLAPPs, issued by the Solicitors Regulation Authority (SRA) in England and Wales, points out that “legal representation must not become intimidatory through the use of heavy-handed tactics that are oppressive or abusive.”⁵³ Although similar warning notices have yet to be issued by regulators in Scotland, Northern Ireland or the Republic of Ireland, the codes of conduct in all jurisdictions invariably state that solicitors must maintain strong ethical principles in their practices and not abuse their position by taking unfair advantage of others.

Still, codes of conduct are redundant unless regulators actively enforce them. As long as regulators turn a blind eye to the unethical behaviour of some solicitors, matters of genuine public interest, such as SGBV, will continue to be suppressed.

Despite the SRA’s SLAPP warning notice and ongoing referrals of cases to disciplinary tribunals, Mark Stephens believes that they are not doing enough to tackle this issue. “There’s not much jeopardy for breaching the professional guidelines. You might get a call from them, but ultimately they’re not going to do anything with it,” Stephens told Index.⁵⁴ “They are not prepared to make the hard yards to find someone guilty.”

Intimidatory legal threats targeting survivors are just one of the ways that seeks to isolate and silence them. Verity Nevitt had sought support from her MP, along with other MPs, some of whom had retweeted the crowdfunder she had set up to help pay their legal fees. As a result, two MPs received cease and desist letters from the claimant, warning them not to speak about the case. She said that she was initially very worried that the MPs would have to refrain from supporting her thereafter, but she was fortunate that they were undeterred.

Kayleigh Payne said she felt isolated by the process of identifying a solicitor to represent

her. She said she had to contact over a dozen solicitors before finding someone who would agree to defend her. The initial responses from solicitors left her feeling deeply anxious. “There were at least two [solicitors] who said ‘well you can’t just come out and call someone a rapist’,” she told Index.⁵⁵

Police complaints are another tactic that have been used, alongside the civil legal actions, in an effort to intimidate survivors who dare to speak out. As a result of their social media posts, Cresswell, Nevitt, and Payne were all reported to the police by the men they had accused of sexual assault; Cresswell for alleged malicious communications and harassment, and Nevitt and Payne for harassment.⁵⁶

The complaint against Nevitt was made before the civil case was initiated. “Sussex Police didn’t do anything at all, which is, I think, when he turned to the civil court. It was very much a process of him trying to use what he could,” Nevitt explained.⁵⁷ The complaint against Cresswell was filed just before the civil action for defamation was

initiated against her. In the end, the police didn’t pursue the allegations against either Nevitt or Cresswell.

For Payne, the experience of having been reported to the Gardaí was more difficult and drawn out. Within a month of her having posted the allegations on social media, and following the arrival of the letter of claim, two detectives knocked on her door while she was at home with her young daughter. They told her that she would need to come into the station for questioning under caution the following week.⁵⁸

“That was a shock. I did get quite upset. I cried and I said - how am I the one being hauled in for questioning? How does this work? When I went to report a rape, nobody asked him a question,” Payne said. She said that she was accompanied by her solicitor for questioning, which lasted over an hour, the following week. She told Index that she couldn’t recall exactly how long afterwards she received the notification that the investigation was completed with no charges, but that she remembered it taking several months.⁵⁹ ✕

52: Written statement from Susan Coughtrie, May 2025

53: Warning Notice: Strategic Lawsuits against Public Participation (SLAPPs), Solicitors Regulation Authority, November 2022, updated May 2024, <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>

54: Index interview with Mark Stephens, May 2025

55: Index interview with Kayleigh Payne, May 2025

56: The Cost of Speaking Out: Nina’s Story, Good Law Project, October 2022, <https://www.youtube.com/watch?v=nVvVpOGijgc>

57: Index interview with Verity Nevitt, May 2025

58: Index interview with Kayleigh Payne, May 2025

59: Ibid.

There is so much money at stake that you are just not going to engage if you know you could be financially liable for a huge amount of money to somebody who has abused you

– Index interview with **HARRIET WISTRICH**,
January 2025

Funding a legal defence

THE THREAT OF costly damages can be alarming and the sheer expense of defending a legal action is often prohibitively high in itself. The costs can be particularly daunting for lower-income individuals, who are disproportionately affected by SGBV.⁶⁰ “The funding issue is the single biggest issue in terms of what stops people from fighting these cases,” said Verity Nevitt.⁶¹

In London, most libel trials will start at about £1 million. Even preliminary hearings, when defendants might seek to get the case thrown out on meaning or jurisdictional grounds, run between £50,000-£100,000.⁶² In Dublin, the cost of mounting a legal defence is not much less; the total cost of a complex defence would be between €500,000-€1,000,000, while a simpler case may be in the region of €100,000-€300,000.⁶³

The absence of reliable funding to safeguard SGBV survivors’ access to justice was reflected in the responses SGBV survivors provided to The Gemini Project’s survey. “The strongest feeling I have is the horror at how there is no well-funded system to support us,” one respondent shared.⁶⁴

Women facing these threats often lack ready access to legal advice, unlike journalists, academics, or NGOs, who may receive legal support through their institutions. “The theory of a legal case that everyone has a similar ability to bring all the relevant evidence before the court and then have a case about it, isn’t true,” Mark Stephens told Index.⁶⁵

“There is so much money at stake that you are just not going to engage if you know you could be financially liable for a huge amount of money to somebody who has abused you,” →

60: Alyssa R. Leader, A SLAPP in the Face of Free Speech: Protecting Survivors’ Rights to Speak up in the “Me Too” Era, First Amendment Law Review, Vol 17, Issue 3, 2019, page 441

61: Index interview with Verity Nevitt, May 2025

62: ‘London Calling’: The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom, The Foreign Policy Centre and Article 19, February 2023, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-Publication-February-2023.pdf>

63: Peter Andringa et al, Juries in Defamation Cases, Index on Censorship, November 2023, https://www.indexoncensorship.org/wp-content/uploads/2023/11/index-report-2023-november_defamation-and-juries_web_proof3.pdf

64: Lucy Nevitt and Verity Nevitt, Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025, <https://thegeminiproject.org/research/>

65: Index interview with Mark Stephens, May 2025

→ Harriet Wistrich of the Centre for Women’s Justice told Index.⁶⁶

The fear of being further intertwined with the abuser was outlined by Ella Janneh as one of the risks she had considered. “I have to deal with the reality that if I lose, that my rapist will also become a creditor and force me into bankruptcy and control me financially, which will continue a cycle of abuse, so it’s also an aspect of how much more psychological violence do I want to take on from the person who has already derailed my life,” she told Index.⁶⁷

For many people, if they don’t have the funds to cover the costs themselves, they will consider applying for legal aid. This is because legal aid is aimed at helping defendants in civil and criminal cases to meet the costs of legal advice and court representation if they otherwise cannot afford it.

“The very first thing I looked at was legal aid,” Kayleigh Payne told Index.⁶⁸ “Legal aid was just a term I knew and I looked into it.” However, she found out early on that she

wasn’t going to be eligible because of the fact that she was being sued for defamation.

Despite a ruling by the European Court of Human Rights (ECtHR) that the blanket exclusion of defamation cases from civil legal aid breaches Article 6 of the European Convention on Human Rights, the right to a fair trial, defamation remains excluded from legal aid provisions in Ireland, Northern Ireland, and England and Wales.⁶⁹

In *Steel and Morris v. United Kingdom*, the ECtHR remarked that “[t]he inequality of arms could not have been greater” and underscored the critical importance of access to legal aid in such cases. In cases of SLAPP, claimants specifically strive to exploit an imbalance of power (whether financial, societal, or both) in an effort to intimidate and silence critics.

Scotland remains the only jurisdiction in the UK where legal aid can be secured for defending a defamation action. However the Scottish Legal Aid Board has revealed that in the seven years until 2023, only five applications for civil legal aid for a defendant

in a defamation case had been granted a legal aid certificate.⁷⁰ The total value of the payments made on those five cases was £2004.⁷¹ Lyndsay Fleming of JustRight told Index that Scotland is in a “legal aid crisis”.⁷²

In England and Wales, it may be possible to get legal aid for cases – including defamation cases – that would not usually be eligible if your human rights are at risk. This is known as Exceptional Case Funding (ECF), but it is difficult to secure.

Index previously submitted a freedom of information (FOI) request seeking details as to how many people have been able to secure legal aid funding for defamation cases through ECF. In their reply, the Home Office said it could not provide a figure, stating that such applications “are not electronically captured on the Legal Aid Agency (LAA) case management systems” and as a result, “the LAA would still be required to undertake a manual search of all ‘ECF other’ cases to answer the question.”⁷³

Tamsin Allen told Index that she had recently made a successful application for

ECF on behalf of a woman who was facing a defamation case. “It was incredibly difficult. The amount of funding that was given was dwarfed by the amount of time it took to apply for and the battle with the legal aid authorities,” she said.⁷⁴

“Legal aid has been decimated by successive governments. There’s no money in the system. What is paid is not enough – it’s very difficult to run a case on legal aid. Particularly in an area where legal aid isn’t usually available like defamation. The Legal Aid Board needs to understand that these are serious human rights issues at stake and a serious imbalance of power – it’s exactly what the special category of legal aid was meant for.”⁷⁵

Defamation is commonly used to target survivors of SGBV. However it is not the only legislative vehicle that is used to bring a SLAPP. SLAPPs can manifest as any number of claims, such as privacy, data protection, harassment, or copyright, which may be eligible for legal aid.

Initially, legal action was brought against Verity and Lucy Nevitt on grounds of misuse →

66: Index interview with Harriet Wistrich, January 2025

67: Index interview with Ella Janneh, January 2025

68: Index interview with Kayleigh Payne, May 2025

69: *Steel and Morris v. the United Kingdom* [2005] 18 BHRC 545, (2005) 41 EHRR 22, [2005] ECHR 103, 18 BHRC 545 paras 72, 113

70: FOI request response to Index on Censorship, January 2023

71: Ibid.

72: Index interview with Lyndsay Fleming, January 2025

73: FOI request response to Index on Censorship, August 2023

74: Index interview with Tamsin Allen, January 2025

75: Ibid.

→ of private information and harassment. “The day after I got the papers through – when we were served – I phoned a solicitor advocate, who specialised in legal aid. We started to go through that. That’s why the proceedings were so delayed in the beginning; we basically stayed them while we were applying for legal aid. In the first instance, it was denied and then we appealed it and then it was granted,” Nevitt told Index.⁷⁶

However, she said the application was cancelled shortly afterward due to money being deposited into her sister’s bank account. “She was the lead tenant in a house share,” Nevitt explained. “They took that as being income [which would have put her] over the threshold.”⁷⁷ By that point, she said, the legal aid application process had already taken so long that continuing to pursue it was no longer viable. “It was very much the case that we can’t really keep trying with legal aid because it’s taking so long.”⁷⁸

Access to justice strategies in the UK and Ireland have emphasised the need to prioritise

cases involving domestic or sexual violence in the allocation of legal aid. One report from Northern Ireland recommended that domestic violence injunctions be treated as a “top priority” for legal aid (ranking above “high priority”) while defamation actions were classified as a “low priority.”⁷⁹ Such strategies rightly recognise the importance of supporting survivors, but they fail to consider how defamation (or other causes of action) can be weaponised by alleged perpetrators to silence and intimidate those who speak out. This disconnect creates a significant gap between policy intentions and the realities faced by survivors navigating the legal system.

The lack of civil legal aid provisions means that many survivors of SGBV who face SLAPPs will struggle to identify a source of funding for their legal defence. “I looked at a personal loan – that really wasn’t feasible for me either. There was no way I could get a loan for that amount,” Kayleigh Payne told Index.⁸⁰

Some defendants, like Nina Cresswell and the Nevitts, tried to legally represent themselves

in an effort to manage the costs associated with defending a case. “The first year, I was my own lawyer and it completely [took] over my life. It doesn’t matter how much research you do or how informed you are, defamation law is extremely complex to try and navigate alone,” Cresswell said.⁸¹

Cresswell had her own business when legal proceedings were initiated against her. She said it had been doing well but due to the burden of the litigation, she couldn’t continue to run the business anymore. She was forced to take up a part-time job instead, which allowed her to have sufficient income while still having the time to work on her legal defence in the evenings. “After work, I’d work [from] like 5.30 to midnight [or] one o’ clock as a ‘lawyer’,” Cresswell said.⁸²

According to the Gemini Project’s survey, Cresswell’s experience is not unusual; 83.3% of respondents to the survey said that legal proceedings had impacted their ability to work, compared to just 16.7% of respondents who said they hadn’t.⁸³ This is yet another

factor that will inevitably affect survivors’ quality of life and further pressure them into settling the case.

Some defendants may consider a form of “no win, no fee” agreement in order to secure legal representation for their case. In these cases, a lawyer is only paid if the case is successful; typically receiving nothing if they lose and a success fee if they win.

However, “no win, no fee” agreements are only likely to be offered to defendants with a claim that has a decent prospect of success and where there is a strong likelihood that costs can be recovered from the claimant (they have some assets). Many solicitors will view a case in which a survivor has publicly named a perpetrator – in the absence of any police investigation or conviction – as not having a strong chance of success.

Nonetheless, Tamsin Allen says that a “no win, no fee” agreement – or conditional fee agreement (CFA) as they are known in England and Wales – is feasible as long as the person on the other side is very wealthy. “Because then →

76: Index interview with Verity Nevitt, May 2025

77: Ibid.

78: Ibid.

79: A Strategy for Access to Justice: The Report of Access to Justice (2), Queen’s University Belfast, September 2015, <https://niopa.qub.ac.uk/bitstream/NIOPA/1392/1/access-to-justice-review-consultation.pdf> page 29

80: Index interview with Kayleigh Payne, May 2025

81: Sued for Speaking Out, Good Law Project, August 2023, <https://www.youtube.com/watch?v=McKqVVYeBgQ>

82: Ibid.

83: Lucy Nevitt and Verity Nevitt, Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025, <https://thegeminiproject.org/research/>

→ you could [run the case] under a conditional fee agreement with insurance,” she told Index.⁸⁴

Even then, “no win, no fee” agreements are not a silver bullet. In *MGN Limited v. United Kingdom*, the ECtHR held that excessive conditional fee agreements could have a “chilling effect” on a claimant by making them more likely to settle claims.⁸⁵ They are also not available everywhere in the UK: the Law Society of Northern Ireland has, for example, banned these kinds of agreements.⁸⁶

In most cases, crowdfunding (through websites like CrowdJustice or GoFundMe) seems like the only potentially viable option to fund a legal defence. It’s not impossible to raise a large amount of money to fight a SLAPP through a crowdfunder – journalist Carole Cadwalladr raised over £300,000 to help her fight her case – but it is very difficult, particularly if you don’t have such a prominent public profile.⁸⁷

“If you are defending a libel action you are talking about hundreds of thousands often

and you are not going to raise that through crowdfunding unless you are very lucky,” Harriet Wistrich told Index.⁸⁸ Only about 1-3% of the people who see a crowdfunding page will donate, so crowdfunding pages must reach a very large audience in order to generate enough donors.⁸⁹

Survivors should be entitled to pursue justice and still remain anonymous and yet a successful crowdfunding campaign often relies on a compelling story and a visible victim. This is more difficult to do in an anonymous capacity.

Last year, one survivor (Ms X) sought to raise £30,000 to help her fund her legal defence. She had previously reported allegations of rape to the police but was told that there was insufficient evidence. She therefore decided to share her experience online as, she said, she felt she had a responsibility to warn other women about the individual in question. “I was then sued for libel by my perpetrator in an attempt to silence me,” she wrote on her crowdfunding page.⁹⁰

She said that she initially represented herself as she had no funding for lawyers. “This was immensely complex and difficult as I have no legal background and am suffering from ill mental health, triggered by having to relive the incidents,” she wrote. As well as legal costs, she said she was seeking funding to pay for a medical report to outline the state of her mental health to the court. “I need to pay for this urgently so that I can continue to defend myself which I simply cannot do without legal help,” she wrote.⁹¹ In the end, she raised just £2,820.

“You don’t know how the crowdfunder is going to do. Sometimes they just absolutely bomb. Just occasionally you make enough money to cover it,” Tamsin Allen told Index.⁹² “Occasionally the crowdfunder itself can be relied on by the claimant to say ‘here you are talking about this case, making the allegations all over again. That’s an aggravating feature. You’re saying it to a whole new audience now. You have to be very careful’.”⁹³

She points out one of the more precarious contradictions for survivors seeking financial support: in trying to raise the funds necessary to defend themselves, they risk worsening their own legal position. By publicly sharing their story within the context of explaining their need for funding for a legal defence, survivors may inadvertently provide ammunition to the claimant, who could argue that the fundraising campaign constitutes a repetition or amplification of the original alleged defamation.

“These campaigns must be carefully articulated to avoid his lawyers being able to claim you are aggravating the damage to his reputation by spreading the defamation further through the dissemination of your fundraising campaign,” Yoshida and Robinson warn in *Silenced Women*.⁹⁴

Crowdfunding for a legal defence in Ireland carries additional legal risk due to the ongoing application of the common law principles of champerty and maintenance, which →

84: Index interview with Tamsin Allen, January 2025

85: *MGN Limited v. United Kingdom* 39401/04 [2011] ECHR 919 (9 June 2011) paras 64, 101

86: Solicitors (Northern Ireland) Order 1976, Part V, s.64

87: Carole Cadwalladr, Support me against Arron Banks, Crowd Justice, <https://www.crowdjustice.com/case/support-me-against-arron-banks/>

88: Index interview with Harriet Wistrich, January 2025

89: Crowdfunding for Community Enterprises: A toolkit, Highlands and Islands Enterprise, <https://www.hie.co.uk/media/4860/crowdfundingplusforpluscommunityplusenterprisesplus-plusaplustoolkit.pdf>

90: Ms X, Justice for a survivor of rape, Crowd Justice, <https://www.crowdjustice.com/case/justice-for-a-survivor-of-rape/>

91: Ibid.

92: Index interview with Tamsin Allen, January 2025

93: Ibid.

94: Jennifer Robinson and Keina Yoshida, ‘Silenced Women: Why The Law Fails Women and How to Fight Back’, published by Endeavour, October 2024, page 293.

Legal aid has been decimated by successive governments. There's no money in the system. What is paid is not enough – it's very difficult to run a case on legal aid. Particularly in an area where legal aid isn't usually available like defamation. The Legal Aid Board needs to understand that these are serious human rights issues at stake and a serious imbalance of power – it's exactly what the special category of legal aid was meant for.

– Index interview with **TAMSIN ALLEN**,
January 2025

→ have the potential to render crowdfunding arrangements unlawful. In a recent judgment exploring whether a crowdfunded case violated these principles, the court held that the charitable nature of the donations – made without an expectation of financial gain – was sufficient to avoid a finding of champerty.⁹⁵ However, the judge said that the issue of maintenance (the giving of assistance to one of the parties in an action by someone without an interest in the action) was more difficult to establish. This was because the interests of the individuals who donated could not be established.⁹⁶ The judge ultimately found (by relying on a sworn testimony) that the principle of maintenance had not been violated in that case.

Notably, the judgment also cited *O'Keefe v. Scales* [1998], which held that the law relating to champerty and maintenance “must not be extended in such a way as to deprive people of their constitutional right of access to the courts”.⁹⁷ Given the severe lack of alternative funding options, this principle will hold particular relevance for SGBV survivors seeking to defend themselves against SLAPPs.

Despite the challenges and the risks, Payne, Cresswell, and the Nevitts all undertook crowdfunding campaigns to fundraise for their respective legal defences. Verity and Lucy Nevitt opened their CrowdJustice fundraiser after their solicitor told them that they would need £100,000 in order to be able to fight the case.⁹⁸ “We knew we had to crowdfund. We knew we weren't going to be able to get £100,000 but we said let's see how far we can take it,” Nevitt explained.⁹⁹

She said it hit £10,000 really quickly, but then after that initial influx it slowed down. “It wasn't really going anywhere so it really did force our hand in terms of settling,” Nevitt told Index. “I [would have been] determined to fight to the end if it wasn't for the funding issues. And to be honest, if it wasn't for Lucy, who wanted it to be over, we would have taken it the whole way.”

For Kayleigh Payne, a friend had offered to set up a GoFundMe page for her in order to pay her legal fees. “I think the initial goal was about €30,000 just to get the case to court, and then we would have to do another GoFundMe to fund the days in court,” Payne explained.¹⁰⁰ →

95: *Campbell v O'Doherty* [2025] IEHC 223, paras 58, 59

96: *Ibid*, paras 51, 57

97: *Ibid*, paras 45, 53

98: Index interview with Verity Nevitt, May 2025; Lucy and Verity Nevitt, Sexual violence victims fight gagging order from attacker, CrowdJustice, <https://www.crowdjustice.com/case/sexual-violence-victims-fight/>

99: Index interview with Verity Nevitt, May 2025

100: Index interview with Kayleigh Payne, May 2025

→ In the end, she raised €22,000.¹⁰¹

“I think the only reason I got so many donations to the point where I actually could pay my counsel was because it happened to coincide with a mini-MeToo movement within the Irish comedy sector. It was literally that same week,” she said. “People were talking about it. It was trending. It was fortuitous. I have seen other GoFundMe [pages] for similar situations, where it’s very hard to get them off the ground. I just got lucky that way that it was something people were really clued into at the time.”

At the same time, her friend – the organiser of the GoFundMe – was also subject to harassment. She was, according to Payne, contacted via the GoFundMe page, via WhatsApp, and via email on multiple occasions by the litigant’s solicitor and a family member. She also received legal letters demanding that the page be taken down, that an apology to the litigant be posted (on terms to be agreed with

his solicitor), that she suggest ways to repair the damage to his reputation, and that she cover his legal costs.¹⁰²

What if Payne hadn’t got the money for her legal fees? “It’s not nice to think about. There really was no other way for me to get money to pay my team and no one was going to do this pro-bono so I really was dependent on keeping the team that had agreed to work with me but only if I had the money. If that hadn’t happened, say if I got a few hundred, maybe a couple of thousand, I actually would have had to – I don’t like to think about it – I actually would have had to agree to what they were demanding, which was to publicly state that I was lying. I can’t even imagine the impact that would have had on me and my family,” she told Index.

“A number of things happened that were just incredibly lucky— in a different year, a different month, they might not have fallen into place for me and that would have made this look very different.”¹⁰³ ✕

Because it’s a civil case, I won’t have access to victim support services usually available in a criminal rape trial. I will be treated as a defendant rather than the victim of a crime.

– KAYLEIGH PAYNE

OhLookItsMe7, X, January 2021

<https://x.com/OhLookItsMe7/status/1348543462531092480>

101: Linda Hayden, Fundraiser for Kayleigh Payne: Help a rape victim to defend themselves in court, GoFundMe, https://www.gofundme.com/f/cr7cg?rcid=r01-161044151305-06cf9c4434af4154&pc=tw_co_campmgmt_m&utm_medium=social&utm_source=twitter&utm_campaign=p_lico+share-sheet

102: Index interview with Kayleigh Payne, May 2024

103: Index interview with Kayleigh Payne, May 2025

Going to court

APPEARING IN COURT as a defendant in a legal action is daunting for anyone and especially so for survivors of SGBV. Legal proceedings often require them to recount their traumatic experiences in detail and, in many cases, confront their abusers face-to-face. These challenges – combined with the significant demands on time, money, and emotional energy – create powerful disincentives. As a result, very few cases ever make it to court.

Not only does this have a serious impact on survivors who are trying to seek justice, but it means that we have no way of knowing the scope and scale of this issue. “There’s a pressing social need for [SLAPPs to go to court] because it is essentially a problem that isn’t being talked about, and to some extent can’t be talked about, because the cases can’t get to court – either because the women can’t afford them or because the legal tools are not

there,” Mark Stephens told Index, referring to the lack of applicable anti-SLAPP laws in the UK and Ireland.¹⁰⁴

The high cost of litigation, coupled with the lack of institutional support for survivors, makes it easy for abusers to weaponize the legal system. As Tamsin Allen pointed out, SLAPPs exploit a fundamental flaw in the legal framework: “the law assumes that both sides of a dispute are rational and that the motivation for bringing a claim is to achieve recompense or justice rather than to bully.”¹⁰⁵

When an abuser files a claim, whether for harassment, defamation, or other cause of action, the survivor is no longer the victim in the eyes of the justice system. Instead, they are forced to defend themselves and disprove the accusations levelled against them.

Kayleigh Payne was acutely aware of her position as a defendant as her court date approached in 2021. The month before the

scheduled start of her defamation trial she wrote on social media about the lack of support available to her. “Because it’s a civil case, I won’t have access to victim support services usually available in a criminal rape trial. I will be treated as a defendant rather than the victim of the crime,” she wrote.¹⁰⁶ “It took the rapist 9 months to bring me to court. In 16 years I was not afforded that opportunity to hold him accountable in front of a judge.”

Payne told Index that, in the week leading up to the trial, her solicitor walked her through what to expect in court. “He explained to me that before we were called into the courtroom we would all be out there in the one spot,” Payne told Index.¹⁰⁷ “It was daunting – I think that was one of the things I was most nervous about. More so than actually being up testifying or cross-examined or anything like that.”

Verity Nevitt found the experience of waiting to be called into the courtroom one of

the most difficult parts of being in court. “I just remember staring at my sister being absolutely terrified because we didn’t know if he was going to show up. We were all standing there just on edge,” Nevitt recalled.¹⁰⁸ “I think that was probably the hardest bit was waiting in the corridor not knowing if he was going to come around the corner.”

The possibility of having to face an abuser can have a profound impact on survivors of SGBV and may impact their capacity to give evidence in court. “They may need additional support for being a witness. They may freeze when they’re confronted with [an abuser],” Tamsin Allen told Index.¹⁰⁹

A survivor’s legal representatives can request that a judge put special measures in place in order to protect survivors from undue distress – including by allowing them to enter and exit the courtroom via different routes to avoid them coming into contact with an →

104: Index interview with Mark Stephens, May 2025

105: Index interview with Tamsin Allen, January 2025

106: OhLookItsMe7, X, January 2021, <https://x.com/OhLookItsMe7/status/1348543462531092480>

107: Index interview with Kayleigh Payne, May 2025

108: Index interview with Verity Nevitt, May 2025

109: Index interview with Tamsin Allen, January 2025

→ abuser. “The judge has very wide discretion, you just need to write to the judge and say ‘this is the situation and can you please take these measures?’,” Allen said.¹¹⁰

Neither the Nevitts nor Payne knew to request special measures and, they said, such measures were never offered to them. As Allen told Index, civil courts are not sufficiently aware that defamation proceedings can be used to bully and intimidate survivors of SGBV into silence.¹¹¹ At the same time, some lawyers may not be aware that special measures from criminal cases can be adapted and applied to civil cases in order to allow for the protection of survivors of SGBV.

Encouragingly, there seems to be growing recognition of the need to better support SGBV survivors within the court system. Ireland’s Department of Justice set out in its Statement of Strategy (2024-2026) that it will drive significant reform across the State’s legal system in order to be “more victim-centred, trauma-informed and [to] support victims at every stage of their journey in the criminal, family and civil

legal processes”.¹¹² Index asked the Department whether supports like special measures for civil cases would be taken into consideration in the strategy but did not receive a response by the time of publication.

Nonetheless, Irish courts have a long way to go when it comes to safeguarding survivors who are going through the court system. According to Anne-Marie James, solicitor and chair of the Dublin Rape Crisis Centre, even “low hanging fruit” like screening women giving victim impact statements in criminal cases is not always done properly. She referred to one case in which a survivor could see the abuser reflected in the screen. “While she was speaking, she was virtually looking at him,” she told Index.¹¹³

Nina Cresswell’s legal team (which included Tamsin Allen) made a successful request for special measures ahead of her case going to court. As a result, Cresswell and the claimant entered and left the court at staggered times via different routes. She was screened from his view and that of the public galleries when she gave

evidence, and was entitled to indicate to the judge if she felt she needed a short break during her evidence session (although she did not end up using it). She was also given permission to attend the trial remotely when she was not giving evidence.¹¹⁴

According to Allen, it was very obvious to the judge that Cresswell could be traumatised because the subject matter was an assault: did it happen or didn’t it? “It could be more difficult if the allegation was slightly peripheral to the subject matter of the case. If it was about a financial issue but the important background was a history of domestic abuse.”¹¹⁵

A judge may be less likely to approve special measures if they believe they would unfairly advantage one party over the other. “The judge also has to make sure that it’s fair – you don’t want to give the other side an appeal point. If, for example, they screen someone, it might be more difficult for the defendant because they can’t see the reactions of someone who’s being asked questions. It may be seen to give an unfair advantage.”¹¹⁶

“The other problem is that it creates more cost for the person who is asking for the special measures because they may need to do a witness statement, for example, to explain why they are frightened. They may need to get psychiatric evidence to support their application, which again would be expensive, and then get lawyers to make the application. With judges who understand trauma better and who understand the context better, it might reduce the cost because judges would be looking out for it themselves,” Allen explained.¹¹⁷

Under the Istanbul Convention, which was ratified by Ireland and the UK in 2019 and 2022 respectively, training should be rolled out to all professionals who come into contact with survivors and perpetrators of SGBV – including judges.¹¹⁸ According to the Judicial Council, which provides for the continued education of judges in Ireland, two of the training programmes delivered annually are “avoiding re-traumatisation” and “coercive control”.¹¹⁹ Such training appears to be targeted at →

110: Ibid.

111: Ibid.

112: A Safe, Fair and Inclusive Ireland Statement of Strategy 2024 - 2026, Government of Ireland Department of Justice, <https://assets.gov.ie/static/documents/department-of-justice-statement-of-strategy-2024-2026.pdf> pages 10, 12

113: Index interview with Anne-Marie James, May 2025

114: Hay v Cresswell [2023] EWHC 882 (KB) para 93, <https://www.judiciary.uk/wp-content/uploads/2023/04/Hay-v-Cresswell-26.04.23.pdf>

115: Index interview with Tamsin Allen, January 2025

116: Ibid.

117: Ibid.

118: Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, Council of Europe Treaty Series - No. 210 <https://rm.coe.int/168008482e>

119: Judicial Studies Committee, The Judicial Council, updated January 2025, <https://judicialcouncil.ie/judicial-studies-committee/>

→ criminal judges however, and is not as readily available to judges in civil cases.

Moreover, as Anne-Marie James pointed out, judges in Ireland are mandated to take just one day's training per year. "One day!" she said, highlighting the inadequacy of the current training provision.¹²⁰ High Court judges in the UK receive similarly few training days. By contrast, judges in other common law jurisdictions are advised to invest many more days in their professional development; the equivalent of ten days per year in Canada, and five days per year in Australia, for example.¹²¹

The emotional toll of appearing in court without adequate support, compounded by barriers such as cost, retraumatization, and the risk of not being believed, can influence a survivor's decision to avoid the courtroom altogether. Many choose to settle, not because it delivers the justice they deserve. But because it is the most accessible and least painful option available within such deeply flawed judicial systems.

At the same time, a claimant may be inclined to settle because they feel that it is unnecessary

to incur the additional costs of going to trial. They may believe that the survivor has been sufficiently deterred from speaking out due to the already painful experience of the litigation process. The claimant may also want to avoid being questioned about their behaviour in front of a judge, or to avoid their name being made public in court judgments or in any possible court reporting in the media.

Kayleigh Payne's case was settled (without costs) a few days before her trial was due to start. She said she was half expecting that it wouldn't go to trial, but she didn't expect to end up with a settlement so close to the trial's start date. Under the terms of the settlement, she can speak about her experience but cannot name the claimant.

"I can only imagine the kind of information that would have been publicly available had the trial gone ahead," she told Index.¹²² "He would have been warned, surely, by his legal team that his name would be made public and that the press would have access and be allowed to report on it. I'm sure that wasn't what he wanted."

Lucy and Verity Nevitt also agreed to a settlement. "It was a really difficult decision," Lucy said at the time. "It took us a long time to decide. If we had the money we would have gone the whole way. This wasn't just about us, there are so many other victims out there. We wanted that judgment of us winning the case to be written into law. But I had university work to get back to and we had to get back to living our lives. A win for us was the proceedings ending at that point."¹²³

Lucy and Verity's experience of wanting to go beyond a settlement and fight the case to trial was echoed by respondents to the Gemini Project's survey. One respondent said: "I was lucky to have pro-bono legal support and to reach a settlement that allows me to talk about my experiences, still (with an exhaustive list of characteristics by which I can't identify my abuser). I am otherwise silenced, though, and know that there are other survivors who are now too afraid to speak out about him... part of me wishes I'd fought the case in court but at the time I don't know if I could have coped".¹²⁴

Even for those determined to see the process

through, it can be appealing to opt for a settlement just to put an end to the ordeal of legal proceedings. Nina Cresswell said that she felt that pull too. "I felt like at times I just wanted it all to go away. But that's exactly what the perpetrators rely on," Cresswell said.¹²⁵

Cresswell ended up defending her case to trial, which was held at the Royal Courts of Justice in London in February 2023. In addition to facing potentially staggering legal costs, the trial would determine whether she would be held liable for a £70,000 award for damages.¹²⁶

She relied primarily on two defences under the Defamation Act 2013: truth (section 2) and public interest (section 4). The truth defence, in particular, is notoriously challenging to establish – not least in SGBV cases – where evidentiary gaps often exist. In Cresswell's case, there was no forensic evidence, no police witness statements, no CCTV footage, and no direct witnesses to the incident (aside from the two parties).¹²⁷ "She had to prove that what she has said is true without any of the powers of the state usually deployed to investigate and prove sexual assault," Tamsin Allen said, →

120: Index interview with Anne-Marie James, May 2025

121: Judicial Education: Continuing Judicial Education, Judicial Committee of New South Wales, July 2023, <https://www.judcom.nsw.gov.au/judicial-education/continuing-judicial-education>; Canadian Judicial Council Professional Development Policies and Guidelines, Canadian Judicial Council, September 2018, <https://cjc-ccm.ca/sites/default/files/documents/2019/CJC%20Professional%20Development%20Policies%20and%20Guidelines%202018-09-26.pdf>

122: Index interview with Kayleigh Payne, May 2025

123: Stephen Wynn-Davies, Battle twin sisters sued by the man they reported for sexual assault, Sussex Express, March 2021, <https://www.sussexexpress.co.uk/news/crime/battle-twin-sisters-sued-by-the-man-they-reported-for-sexual-assault-3151269>

124: Lucy Nevitt and Verity Nevitt, Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025, <https://thegeminiproject.org/research/>

125: Sued for Speaking Out, Good Law Project, August 2023, <https://www.youtube.com/watch?v=McKqVVYeBgQ>

126: Ibid.

127: Clare Wisson, #TattooMeToo: a new dawn for the public interest defence?, Doughty Street Chambers, <https://insights.doughtystreet.co.uk/post/102ie13/tattoometoo-a-new-dawn-for-the-public-interest-defence>

→ explaining the uphill battle she faced.¹²⁸

Unlike criminal proceedings, where the prosecution must prove guilt beyond a reasonable doubt, in civil proceedings the standard of proof is the balance of probabilities; whether it is more likely than not that the statement made was substantially true in its legal meaning. However, the meaning of the impugned statement is interpreted by the judge, not by the person who made the statement. This means that the defendant must prove the truth of the ‘legal meaning’, determined by the judge, which in some defamation cases is not the same as what they had intended.¹²⁹

Due to the challenges of establishing a truth defence, it was not part of Cresswell’s initial legal strategy. It was introduced later after the claimant changed his account of events – from an initial assertion that “nothing happened at all” to a partial admission that he had left a club with her and kissed her. This contradiction weakened his credibility and, according to Cresswell’s solicitor Tamsin Allen, provided the basis for establishing the truth of Cresswell’s

allegations. With limited evidence available, the judge placed particular weight on the parties’ testimony under cross-examination, alongside the police incident log – an emphasis that ultimately worked in Cresswell’s favour.¹³⁰

The judge found Cresswell’s evidence to be more persuasive than that of the claimant and ruled that what Cresswell had posted was true. That ruling, on its own, was enough to defeat the defamation claim but the court nevertheless continued to consider the public interest defence, finding that Cresswell had met all three elements of that defence too. While the judge considered her failure to seek comment from the claimant or reference the police conclusion, these omissions were deemed reasonable given she was writing from personal experience, disagreed with the police handling, and was expressing herself in the context of a traumatic event.¹³¹

The judgment was significant for being the first in which a SGBV survivor, sued for having publicly identified a perpetrator, successfully relied on the public interest defence.¹³² But, as pointed out by barrister Clare Wisson of →

Throughout the case I was constantly reminded of my abuse when writing statements, liaising with my legal team, crowdfunding for legal fees, and during court appearances. It extended and exacerbated the trauma I experienced when I was sexually assaulted. All I wanted to do was to move on and to heal and yet I couldn’t get away from it. It was an inescapable, unrelenting, pervasive intrusion into my life, and I had no choice in being subject to it

– Respondent to survey conducted by The Gemini Project.

LUCY NEVITT and VERITY NEVITT

Surviving in Silence – The Nature and Impact of SLAPPs against Survivors, The Gemini Project, February 2025 thegeminiproject.org/research/

128: Index interview with Tamsin Allen, January 2025

129: Carole Cadwalladr dropped the truth defence in her case after the judge ruled it had a different meaning than the one she had intended. For more see pages 20-21 of ‘London Calling’: The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom, The Foreign Policy Centre and Article 19, February 2023, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-Publication-February-2023.pdf>

130: Clare Wisson, #TattooMeToo: a new dawn for the public interest defence?, Doughty Street Chambers, <https://insights.doughtystreet.co.uk/post/102ie13/tattoometoo-a-new-dawn-for-the-public-interest-defence>

131: Ibid.

132: Ibid.

→ Doughty Street Chambers, the case leaves unanswered the question of whether a survivor sued for libel could successfully defend a case on the basis of a public interest defence alone.¹³³

What is perhaps most encouraging for survivors is that the judgment shows that courts will not shy away from findings of truth even in the absence of a criminal investigation, caution or conviction. The fact that a judge can examine the limited evidence independently and reach a conclusion about the veracity of allegations without relying on the outcome – or even the existence – of a criminal case, offers some small route to justice. It signals to survivors that their experiences can still be taken seriously, and even believed, in the absence of formal charges.

While the legal victory was significant and positive, Cresswell acknowledged the heavy toll the process took on her. “I lived in survival mode for so long during those legal proceedings,” she said.¹³⁴ No survivor should have to go through the process of defending abusive legal actions for speaking about their

experiences, or for attempting to warn others about an abusive individual.

Comprehensive anti-SLAPP legislation, which protects potential targets from being dragged through protracted legal battles intended to silence them, is urgently needed in order to protect those speaking out. Such legislation is already in place in other jurisdictions around the world including states in Canada, Australia, and the United States.

As recommended by the Coalition Against SLAPPs in Europe (CASE) and the UK Anti-SLAPP Coalition, anti-SLAPP laws should always include three key features: (a) an early dismissal mechanism that empowers courts to swiftly filter out SLAPPs without the need for a subjective enquiry into the intentions of the SLAPP filer; (b) penalties to deter the use of SLAPPs and provide full compensation for those affected; (c) protective measures for SLAPP targets, including cost protections.¹³⁵

In 2024, the European Union adopted an Anti-SLAPP Directive instructing all member states to transpose the directive

into national law over the subsequent two years.¹³⁶ Ireland is currently in the process of adopting that legislation, notably by means of the Defamation (Amendment) Bill 2024.¹³⁷ However, Index on Censorship and other SLAPP experts have highlighted serious flaws within the Bill.

“The EU Directive is a floor – not a ceiling. It sets out minimum standards that the EU is encouraging member states to go beyond. With that in mind, the Irish draft legislation is probably somewhere in the basement,” Francesca Farrington, co-convenor of the University of Aberdeen’s Anti-SLAPP Research Hub, told Index.¹³⁸ “You need to craft anti-SLAPP laws carefully and precisely so that they don’t become instruments of abuse in and of themselves. This provision, even if it’s been drafted with good intent, is very vulnerable to abuse because the language used is unclear and inconsistent, and it lacks key remedies.”

As for the UK, Scotland, Northern Ireland, and England and Wales will need to individually adopt their own anti-SLAPP laws in order to

ensure that public watchdogs are protected from abusive litigation. The UK remains a member of the Council of Europe and, as such, UK legislatures should draw on the guidance set out in the Council of Europe Recommendation in order to draft and implement the strongest possible anti-SLAPP legislation.¹³⁹ “The COE Recommendation is non-binding, but it will become more binding as ECtHR case law develops,” Farrington explained.¹⁴⁰

Scotland has recognised the need to address SLAPPs, having opened a public consultation on the issue earlier this year. “The Scottish Government wants to ensure that our legal system cannot be abused to stifle legitimate expression,” Minister Siobhian Brown, said in opening the consultation.¹⁴¹ The Scottish Anti-SLAPP Working Group (led by Index on Censorship) submitted a lengthy response, which included a reference to the fact that survivors of SGBV are among those affected by SLAPPs.

Despite the absence of any anti-SLAPP legislation in Northern Ireland, the High →

133: Ibid.

134: Sued for Speaking Out, Good Law Project, August 2023, <https://www.youtube.com/watch?v=McKqVVYeBgQ>

135: Legislation, UK Anti-SLAPP Coalition, <https://antislapp.uk/solutions/legislation/>

136: Directive EU 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’) [2024] OJ L1/14 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

137: Defamation (Amendment) Bill 2024 Dáil Éireann Bill, <https://www.oireachtas.ie/en/bills/bill/2024/67/>

138: Index interview with Francesca Farrington, May 2025

139: Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), April 2024, <https://rm.coe.int/0900001680af2805>

140: Index interview with Francesca Farrington, May 2025

141: Scottish Government, Consultation on Strategic Lawsuits Against Public Participation (SLAPPs), February 2025, <https://www.gov.scot/publications/scottish-government-consultation-strategic-lawsuits-against-public-participation/pages/1/>

The EU Directive is a floor – not a ceiling. It sets out *minimum* standards that the EU is encouraging member states to go beyond. With that in mind, the Irish draft legislation is probably somewhere in the basement

– Index interview with **FRANCESCA FARRINGTON**, May 2025

→ Court in Belfast made a significant ruling last year when it dismissed a defamation case on the grounds that it constituted a SLAPP. In his written judgment, the judge outlined the concept of a SLAPP in detail to explain why the case – brought by politician Gerard (Gerry) Kelly against freelance journalist Malachi O'Doherty – met that definition.¹⁴²

This decision demonstrates how common law can evolve to address SLAPPs in the absence of statutory protections. Nonetheless, given the significant and systematic obstacles defendants face in mounting a legal defence, it remains unlikely that common law alone could develop sufficiently robust protections for all public watchdogs.

As barrister Bobbie-Leigh Herdman (who represented Malachi O'Doherty) noted, achieving a successful strike-out application

required substantial time and expense.¹⁴³ Early dismissal mechanisms contained in anti-SLAPP laws must reduce the time and cost associated with having a claim struck out.

In England and Wales, the Economic Crime and Corporate Transparency Act (ECCTA) did introduce some limited anti-SLAPP provisions when it was brought into law in late 2023. However, those provisions only apply to claims relating to economic crime.¹⁴⁴ They provide no protection to those speaking out on other matters in the public interest – including on SGBV. The UK Anti-SLAPP Coalition continues to call on Westminster to bring forward comprehensive standalone anti-SLAPP legislation as soon as possible in order to protect everyone affected by legal intimidation for exercising their right to freedom of expression. ✕

142: Kelly v O'Doherty [2024] NIMaster 1

<https://www.judiciaryni.uk/files/judiciaryni/decisions/Gerard%20Kelly%20and%20Malachi%20O%20E2%80%99Doherty.pdf>

143: Bobbie-Leigh Herdman, Dublin Anti-SLAPP Conference, Index on Censorship, October 2024,

<https://www.youtube.com/watch?v=iyBLMCOzbkw>

144: UK Anti-SLAPP Coalition, Analysis and Suggested Amendments to Economic Crime and Corporate Transparency Bill, September 2023, <https://antislapp.uk/wp-content/uploads/2023/09/UK-Anti-SLAPP-Coalition-Briefing-re-SLAPPs-Amendment-WEB.pdf>

Conclusion

WHILE SLAPPS HAVE been primarily associated with other forms of public participation (such as investigative journalism) this report makes clear that survivors of SGBV are subjected to such legal harassment – often with profound consequences. These include not only infringements on the survivor’s right to freedom of expression, but a chilling effect on the public’s right to know.

It is clear that there are significant challenges in uncovering the full scope of how SLAPPs are used to silence survivors of SGBV. The private nature of civil litigation, combined with the fear about speaking up about legal harassment, obscures the extent of the problem.

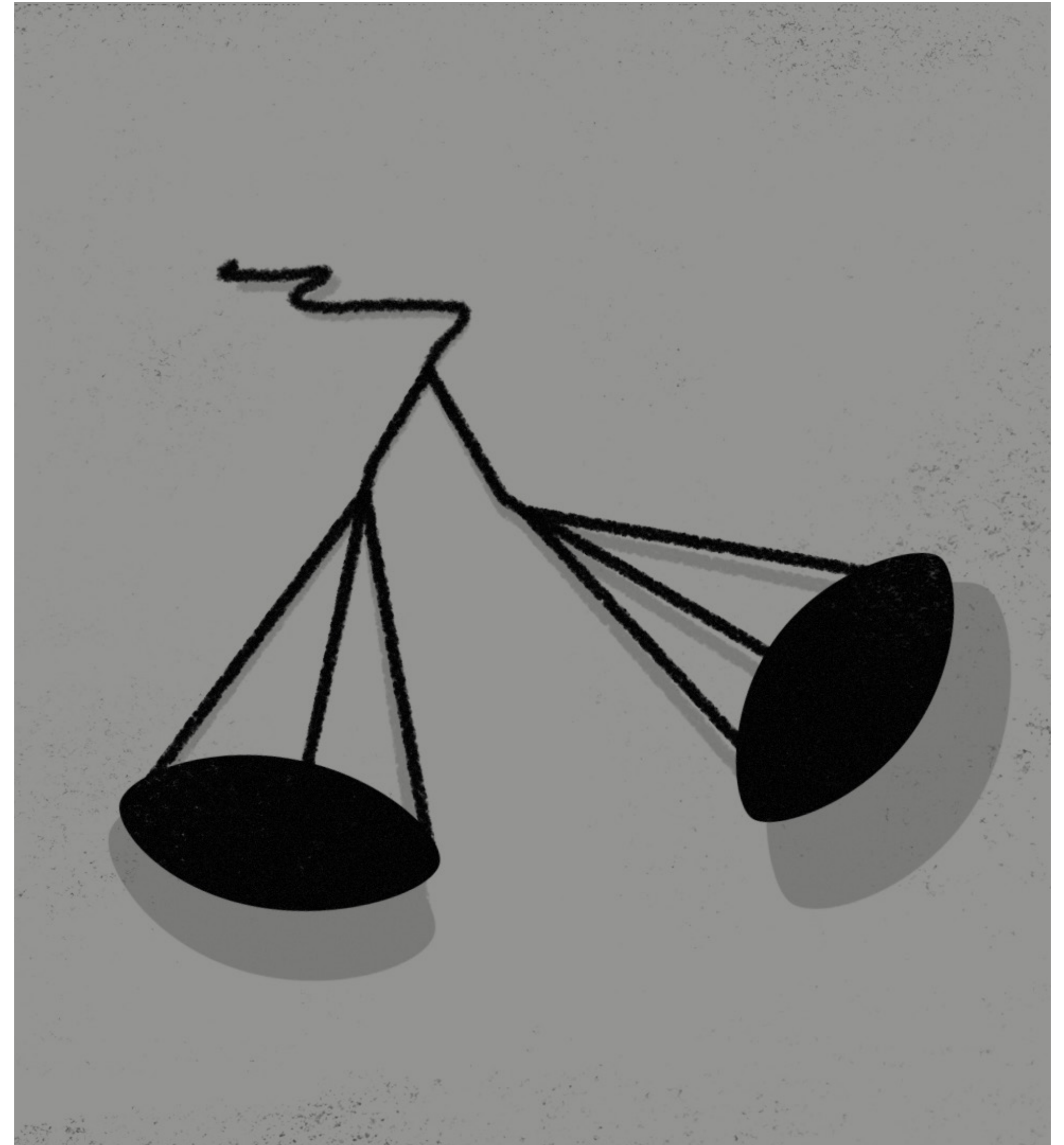
Despite the limitations, a consistent pattern has emerged in this report: from receiving intimidating legal letters, facing legal action, struggling with the cost of mounting a legal defence, and navigating complex and hostile court environments, survivors find themselves trapped in a system that – not only fails to protect them – but actively enables abusers to harass and silence them.

Rather than offering protection or redress, the legal system becomes a conduit for

continued abuse – one that enables perpetrators to exercise control over their victims and suppress public accountability.

Policymakers, regulators, and members of the legal profession must take urgent steps to put a stop to SLAPPs, and in doing so protect the right to freedom of expression, and the integrity of our legal systems. Legal professionals must understand their ethical responsibilities, legal aid should be accessible to enable survivors to defend themselves against SLAPPs, access to special measures (where necessary) should be available in civil proceedings and, crucially, robust anti-SLAPP legislation – capable of recognising the unique challenges faced by survivors of SGBV – must be adopted.

Freedom of expression is a cornerstone of any democratic society. Survivors must be able to speak about their experiences without fear of retribution. As long as abusers are allowed to weaponise the courts, justice will remain elusive, the risk of ongoing harm will persist, and survivors’ fundamental right to freedom of expression will continue to be stifled. The law should be a tool for protection and redress, not a weapon for the powerful. ✕



Recommendations

Governments and devolved administrations should:

- Engage all relevant stakeholders to gain a comprehensive understanding of how existing legislation and the judicial system is being abused in order to undermine SGBV survivors' right to freedom of expression. This includes meaningful consultation with survivor-led groups, civil society, and legal professionals.
- Give due consideration to the implications for freedom of expression both online and offline when drafting and enacting new legislation to ensure that survivors are not further silenced or deterred from speaking out. Legal frameworks should be designed to protect survivors' voices and to prevent the law from being weaponised against them.
- Adopt and implement measures to counter legal intimidation and SLAPPs at a legislative level as soon as possible.
 - Anti-SLAPP Laws should be enacted in England and Wales, Scotland and Northern Ireland and should allow for:
 - (a) accelerated procedures to dispose of SLAPPs at the earliest possible stage in proceedings; (b) sanctions to deter and delegitimise the use of SLAPPs and ensure they are no longer considered a viable means of responding to criticism; and (c) protective measures to safeguard public watchdogs from the worst impacts of SLAPPs and to ensure they are in a position to defend against them.
 - In Ireland, the EU Anti-SLAPP Directive must be transposed into Irish law in full before May 2025. As it stands, the Directive will be transposed primarily by means of the Defamation (Amendment) Bill 2024, but further legislation will be needed to ensure that anti-SLAPP protections go beyond just defamation law. The government must still make essential amendments to the Bill to ensure that the anti-SLAPP provisions it contains are effective. The key amendments that are needed have been put forward by the Irish Anti-SLAPP Network.¹⁴⁵
- Align national laws and judicial practices with the Council of Europe Recommendation on SLAPPs.¹⁴⁶ This alignment is essential to strengthen protections for all public watchdogs, including SGBV survivors. Governments should prioritise the implementation of these standards to prevent the misuse of the legal system against survivors and to uphold their right to freedom of expression. Oversight mechanisms should be developed to monitor compliance and ensure that anti-SLAPP protections are applied effectively in SGBV-related cases.
- Establish meaningful and accessible civil legal aid provisions so that survivors of SGBV can access the funding they need to defend themselves against SLAPPs. For example, in England and Wales, this would mean expanding the admissibility of legal aid for defendants acting in the public interest by extending Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- Ensure that national strategies aimed at combating SGBV explicitly recognise the fact that SLAPPs are being used to silence survivors. They should incorporate a clear commitment to tackling SLAPPs in order to uphold survivors' right to freedom of expression and ensure meaningful access to justice.
- Provide for training to be delivered to all legal professionals in order to ensure that they understand how the law is being abused in an effort to silence SGBV survivors. Such training should be in line with:
 - Article 15 of the (legally binding) Istanbul Convention, which stipulates that all professionals who may come into contact with SGBV survivors receive comprehensive and regular training.¹⁴⁷
 - Article 57 of the Council of Europe Recommendation, which calls for tailor-made educational and training programmes on SLAPPs to be made available to the judiciary, legal professionals and relevant public authorities.¹⁴⁸ →

145: Proposed Amendments to Defamation (Amendment) Bill (2024), Ireland Anti-SLAPP Network, October 2024, <https://www.indexoncensorship.org/wp-content/uploads/2025/05/Ireland-defamation-Bill-amendments-2024.pdf>

146: Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), Council of Europe, April 2024, <https://rm.coe.int/0900001680af2805>

147: Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, Council of Europe Treaty Series - No. 210 <https://rm.coe.int/168008482e>

148: Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs), Council of Europe, April 2024, <https://rm.coe.int/0900001680af2805>

Parliamentarians (TDs, MLAs, MSPs, MPs) should:

- Champion awareness of SLAPPs by using their platforms to raise awareness about the threat they pose to freedom of expression, including the particular challenges that face SGBV survivors. Public statements, debates, and parliamentary questions can all help to spotlight the misuse of the law to silence survivors and other public watchdogs.
- Support the development, introduction, and passage of robust anti-SLAPP legislation. This includes endorsing legal reforms that introduce procedural safeguards such as early dismissal mechanisms, cost protections, and penalties for abusive litigants, as well as laws that explicitly recognise the unique impact of SLAPPs on SGBV survivors.
- Build and maintain strong relationships with civil society organisations, survivor-led initiatives, and human rights defenders working in the area of SGBV. This engagement should inform policy responses and ensure legislative efforts are grounded in the lived experiences of those most affected.

Judicial colleges and councils (that provide training to judges) should:

- Develop and implement training programmes for judges in accordance with the Istanbul Convention. Such programmes should highlight the particular challenges faced by SGBV survivors, and give due attention to, inter alia:

- The potential need for special measures to be put in place (in civil courts) to limit the risk of re-traumatisation for survivors attending court and to safeguard their access to justice.
- The consequences of providing anonymity to alleged perpetrators of SGBV during court proceedings. For example, doing so can stymie the freedom of expression of survivors and prevent warnings about potentially abusive individuals from reaching potential victims.
- Develop and implement training programmes in accordance with article 57 of the Council of Europe Recommendation on SLAPPs.

Regulators of legal services should:

- Develop and disseminate guidance to legal professionals on how to identify SLAPPs. This guidance should include the indicators outlined in the Council of Europe Recommendation on SLAPPs, case studies, and ethical considerations, including as they relate to cases involving SGBV survivors.
- Adopt and promote an Anti-SLAPP Warning Notice, similar to that issued by the Solicitors Regulation Authority (SRA) in England and Wales. Such notices should clearly state that legal representation must not become intimidatory, oppressive, or abusive. They should remind legal professionals that their duty to the courts and to uphold the rule of law supersedes

their duty to their clients when these duties come into conflict.

- Prioritise the investigation of complaints involving abusive legal tactics, such as threatening, misleading, or oppressive legal communications. Where evidence of complicity in SLAPPs is found, regulators must pursue meaningful sanctions to hold individuals and firms accountable. Clear expectations and robust enforcement are essential to deter unethical practices and uphold public confidence in the legal profession.
- Proactively monitor complaints that exhibit the hallmarks of SLAPPs or legal intimidation, paying particular attention to those involving SGBV survivors. Annual reporting on the number, nature, and outcomes of such complaints would support transparency and accountability.
- Develop and facilitate training for legal professionals on their ethical responsibilities in the context of SLAPPs, with particular attention to cases involving SGBV survivors in line with Article 15 of the Istanbul Convention. The training should focus on helping lawyers recognise and navigate the ethical boundaries of advocacy, emphasising their obligation to uphold justice and the rule of law over client interests when these come into conflict. Regulators should make this training a compulsory component of continuing professional development and ensure its regular review and updating in

response to evolving legal practices and SLAPP tactics.

Law firms should:

- Establish and uphold publicly available commitments to maintaining high ethical standards when initiating or threatening legal action. This includes giving due consideration to the recipient – particularly when communicating with individuals (rather than legal professionals), who may already be coping with trauma if they have made allegations of SGBV. Lawyers should avoid the use of language or tactics that could intentionally or otherwise be perceived to intimidate or harass those who are the subject of their communications.

Other stakeholders should consider:

- Supporting the work of the UK Anti-SLAPP Coalition including: signing up to the newsletter to stay informed, contacting your MP to express your concern about SLAPPs and to call for legislative action, and signing the petition calling for anti-SLAPP legislation to be enacted in the UK. ✕



INDEX ON CENSORSHIP

A VOICE FOR THE PERSECUTED

From Survivor to Defendant: How the law is being weaponised to silence victims of sexual violence

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